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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

COUNTY OF SACRAMENTO,

Plaintiff and Respondent,

v.

MICHAEL N. GARABEDIAN,

Defendant and Appellant.

C037440

(Super.Ct.No.
99FS06250)

Plaintiff County of Sacramento, Bureau of Family Support, registered a 1997 New York child support order in Sacramento County Superior Court under the Uniform Interstate Family Support Act (UIFSA). (Fam. Code, § 4900 et seq.)¹ Defendant Michael N. Garabedian appeals from two California orders that, among other things, dismissed his motion to modify the New York

¹ Undesignated statutory references are to the Family Code.

order, and denied his motion to vacate registration in California. He contends: (1) the court erred in dismissing his motion to modify for lack of subject matter jurisdiction; (2) the court denied his statutory and constitutional rights to a hearing on the challenge to registration; and (3) the court's rulings erroneously prevented him from obtaining access to new evidence relevant to residency and fraud. We affirm the orders for reasons we shall explain.

FACTUAL AND PROCEDURAL BACKGROUND

A New York family court declared Garabedian the father of Benjamin Rassbach Garabedian, born April 4, 1984. As modified in August 1997, the New York court child support order required Garabedian to pay the child's mother, Elsa Rassbach, \$248 biweekly, plus costs and arrears totaling \$8,963.61. Garabedian made child support payments for a year. At the time the County of Sacramento (County) registered the order in October 1999, New York alleged Garabedian owed arrears in the amount of \$24,922.11. County later explained that New York would not have sought registration of its child support order in California if it had known where Garabedian was employed for purposes of executing a wage assignment.

Upon receipt of County's notice of registration, Garabedian requested a hearing. Appearing in propria person, he asked that registration be vacated, and, alternatively, moved for modification of the 1997 child support order. His motions were based in part on claims the New York order was obtained by fraud -- specifically, that Rassbach had failed to disclose

her disability income. County responded, asking that the order be given full faith and credit, and enforced under UIFSA. Garabedian appeared at the January 4, 2000, hearing on the motions, and represented that Rassbach had moved from New York to Berlin, Germany.

On January 21, 2000, the Commissioner William Neil Shepherd set the matter for long cause hearing. He issued interim findings and orders, ruling that California had jurisdiction to modify the New York child support order from the date of service in California, and the registered order was enforceable in California because the alleged fraud was intrinsic. Commissioner Shepherd also ordered Garabedian to pay interim guideline support in the amount of \$54 per month, and make regular payments on the arrears. Garabedian made voluntary payments under the interim order, and County did not seek a wage assignment.

In July 2000, County asked the court to reconsider or set aside its interim orders, including the finding that New York did not have continuing, exclusive jurisdiction over the issue of child support. (Code Civ. Proc., § 1008, subd. (b).) County based its request on new evidence supplied by a 19-page affidavit signed by Rassbach. The affidavit stated that Rassbach's permanent residence remained in New York, and explained her delay in responding to Garabedian's motions. Shortly thereafter, New York garnished Garabedian's paycheck in the amount of \$744 per month, effective August 1, 2000. Garabedian moved to quash execution on his income.

Following a hearing on August 8, 2000, Commissioner Shepherd stayed the findings and orders issued on January 21, 2000. He scheduled a long cause hearing on November 16, 2000, where the primary issue would be Rassbach's residency. "If the determination is that . . . she's not . . . a resident of New York within the meaning of the U.S. statute, then everything else flows from there. [¶] If the . . . [¶] . . . initial determination is that she is a resident of New York, then it all stops." He ordered that New York forego the September 2000 wage assignment to enable Garabedian to fly his son from Germany for scheduled visitation. Commissioner Shepherd later clarified the August 2000 order, stating that "to the extent that [County's] enforcement [was] limited to levy, lien, or writ on probate estate [involving Garabedian's inheritance in California], . . . no monies [were] to be disbursed from estate to [County] or [Garabedian]."

County moved to quash Garabedian's subpoena for production of documents held by Rassbach's disability insurer on grounds the requested information was irrelevant to the issues before the California court. Garabedian responded that the information was relevant to both of his motions.

Rassbach's attorney, Michael E. Barber, filed a pretrial statement for the October 26, 2000, settlement conference. He asked Commissioner Shepherd to dismiss Garabedian's modification motion on the court's own motion, or to entertain a motion to quash. Barber specially appeared at the settlement conference on the issue of California's jurisdiction to modify the New York

order. He maintained jurisdiction was a question of law under UIFSA because "Ms. Rassbach has not consented to jurisdiction in California, is not a resident of California, [and] has not been a resident of California." Commissioner Shepherd deemed Rassbach's statement of issues "a motion to dismiss [Garabedian's] request to modify as in excess of the court's jurisdiction" to be addressed at the long cause hearing. County's motion to quash the subpoena would also be heard at that time.

The parties argued the question of jurisdiction to modify the New York child support order before Judge Peter J. McBrien on November 16, 2000. McBrien granted the County's and Rassbach's motions to dismiss Garabedian's motion to modify. He referred the remaining issues for long cause hearing before Commissioner Shepherd later the same day.

Garabedian insisted in the proceedings before Commissioner Shepherd that his objection to registration of the New York child support order included Rassbach's alleged concealment of disability income. County responded that there was no new information, Garabedian had his day in court, and the New York order was entitled to full faith and credit. Garabedian acknowledged that his challenge to the 1997 child support order, based in part on the failure to consider disability income, was on appeal in New York. At the close of the hearing, Commissioner Shepherd granted County's motion to quash the subpoena. He affirmed his earlier ruling that the evidence sought would reveal only intrinsic fraud. The question of

fraud was pending before the New York court, and that court's determination was entitled to full faith and credit. Commissioner Shepherd specifically found the California court lacked in personam jurisdiction over Rassbach. He concluded that "the net result is that California really can't do anything except enforce the . . . New York judgments."

This appeal ensued.

DISCUSSION

I

Garabedian's Motion to Modify Support

UIFSA governs child support orders in interstate cases. (*In re Marriage of Newman* (2000) 80 Cal.App.4th 846, 849.) Together with the Federal Full Faith and Credit for Child Support Orders Act (28 U.S.C. § 1738B), UIFSA ensures that only one state exercises jurisdiction over child support at any given time. (Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2002) ¶ 18:725, p. 18-190.)

The state and federal statutes confer continuing, exclusive jurisdiction over child support on the state that first issued the child support order: (1) if it had subject matter and personal jurisdiction; (2) for as long as the obligor, individual obligee, or the child resides in the issuing state; or (3) until all the individual parties have filed with the issuing state written consent to another state exercising jurisdiction to assume continuing, exclusive jurisdiction for purposes of modification. (28 U.S.C. § 1738B(c), (d) & (e) (2) (B); § 4909, subd. (a) (1) & (2).) Once an out-of-state

child support order is registered in California under UIFSA, it "is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state." (§ 4952, subd. (b).)

UIFSA imposes additional requirements with regard to modification of child support orders, stating: "Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction." (§ 4952, subd. (c).) Specifically, UIFSA provides that once registered in California, the superior court may modify the out-of-state child support order if it finds after notice and hearing that: "(1) The following requirements are met: [¶] (i) The child, the individual obligee, and the obligor do not reside in the issuing state. [¶] (ii) A petitioner who is a nonresident of this state seeks modification. [¶] (iii) The respondent is subject to the personal jurisdiction of the tribunal of this state; or [¶] (2) The child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedure substantially similar to the procedures under this chapter, the consent otherwise required of an individual residing in this state is not required for the

tribunal to assume jurisdiction to modify the child support order.” (§§ 4902, 4960, subd. (a).)

Garabedian challenges on several grounds Judge McBrien’s determination that the California court lacked jurisdiction to modify the New York child support order. None warrants reversal of the order dismissing Garabedian’s motion to modify.

The major flaw in Garabedian’s argument is that he failed to satisfy the requirements for California’s exercise of subject matter jurisdiction to modify the child support order under UIFSA. Judge McBrien did not specify the grounds for his ruling there was no jurisdiction. We may affirm on any theory supported by the law. (*Davey v. Southern Pacific Co.* (1897) 116 Cal. 325, 329.)

At no time did Garabedian claim the parties consented in writing to jurisdiction in California. Commissioner Shepherd was therefore correct in observing that Rassbach’s residency was the pivotal issue to be determined at the hearing on November 16, 2000. Garabedian and Rassbach submitted affidavits and argument on that question for Judge McBrien’s review. Rassbach’s affidavit referenced exhibits relating to her residency in New York. The record supports an implied finding Rassbach resided in New York, but worked for lengthy periods in Germany. That finding alone is sufficient to defeat jurisdiction under section 4960, subdivision (a)(1)(i). In addition, Garabedian declared he is a California resident. Thus, he is not seeking modification as a “petitioner who is

a nonresident of this state" as required under section 4960, subdivision (a)(1)(ii).

We reject the claim that Commissioner Shepherd's August 2000 order staying collection of Garabedian's September wages conferred continuing, exclusive jurisdiction on the California court. The August order stayed the January 2000 interim orders pending resolution of the jurisdictional issue at the long cause hearing. "A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal." (§ 4909, subd. (e).)

Garabedian contends Rassbach submitted to California jurisdiction by authorizing registration, falsely swearing that she lived in New York on Greenwich Street, submitting affidavits and declarations before Barber specially appeared on her behalf, submitting a statement of issues in October 2000 which contained no limitation on the nature of her appearance, and by objecting to notice that she attend and produce documents at the long cause hearing. There is no merit in his contentions.

Garabedian provides no authority for the proposition that California courts obtained subject matter jurisdiction by virtue of Rassbach registering the New York child support order through UIFSA. Indeed, the suggestion is contrary to the limitations on subject matter jurisdiction as set forth in sections 4952 and 4960. Rassbach clarified the record regarding her place of residence. County filed Rassbach's first affidavit as new

evidence to support its own motion for reconsideration of Commissioner Shepherd's interim finding that California had jurisdiction to modify the New York child support order. Barber filed a pretrial statement in preparation for the October 26, 2000, settlement conference. At the start of that hearing, Commissioner Shepherd clarified that Barber was appearing specially on behalf of Rassbach for purposes of challenging jurisdiction to modify the New York child support order. Garabedian did not object to Barber's limited participation in those proceedings. With respect to Rassbach's objection to Garabedian's notice to appear and produce documents, this court denied a request to take judicial notice of that document.

Next, Garabedian argues the court should have denied what it deemed to be a motion to dismiss his motion to modify because it "was actually a reconsideration motion in improper form." County had already challenged Garabedian's motion to modify on jurisdictional grounds. Whether the court viewed Rassbach's statement of issues as a motion to dismiss or simply opposition to Garabedian's motion to modify, the legal result would have been the same. We therefore conclude Garabedian suffered no prejudice from the court's characterization of Rassbach's opposition.

Garabedian argues the hearing on his challenge to registration should have been held before the hearing on his motion to modify. In light of our conclusion there was, in any event, no jurisdiction to modify, Garabedian was not

prejudiced by the order in which Judge McBrien and Commissioner Shepherd addressed the issues before them. Indeed, given the clear lack of jurisdiction to do anything but enforce the New York order, judicial economy was served by taking that issue first.

We are also unconvinced by Garabedian's claim Judge McBrien's ruling left him with no forum in which to modify the 1997 child support order. He acknowledged at the November 16, 2000, long cause hearing that his challenge to the 1997 order was on appeal in New York. It also appears that New York had exercised its continuing, exclusive jurisdiction by requesting registration of the 1997 child support order, and separately obtaining a wage assignment. Interstate disputes over child support are, by their nature, inconvenient to one or both parties. However, there is no authority to support Garabedian's suggestion California may assume jurisdiction merely because New York is an inconvenient forum for him.

Garabedian offers no authority to support his argument that the motion to dismiss his motion to modify was akin to a motion for summary judgment, and Judge McBrien was therefore required to view the facts in the light most favorable to him. Garabedian's remaining issues are moot in light of our resolution of the modification issue.

II

Garabedian's Challenge to Registration of the New York Order

Section 4956 states that "[a] party contesting the validity or enforcement of a registered order or seeking to

vacate the registration has the burden of proving one or more of the following defenses: [¶]. . . [¶] (2) The order was obtained by fraud.” Garabedian maintained from the start that there was new information the New York order was obtained by fraud.

Garabedian argues Commissioner Shepherd’s rulings denied him a hearing on his challenge to County’s registration of the New York order in violation of his statutory and constitutional rights. The simple response to Garabedian’s claim is that the commissioner did, in fact, schedule and hold a long cause hearing on the registration issue, among other matters, on November 16, 2000. Garabedian acknowledged at the hearing that his challenge to the 1997 child support order, based in part on Rassbach’s alleged failure to reveal her disability income, was on appeal in New York. Commissioner Shepherd found that there was no extrinsic fraud, and confirmed his interim ruling that the New York order was enforceable in California. Garabedian does not challenge on appeal the sufficiency of the record to support those findings.

III

The Factfinding Process

Garabedian does, however, complain that the court “was prejudicially unable to direct discovery, subpoena and notice to attend and produce, and unable to reasonably conduct fact-finding” that Garabedian viewed as necessary on the issues relating to residency and modification. To the extent Garabedian suggests Commissioner Shepherd should have granted

further discovery, we conclude there was no abuse of discretion in light of the other rulings in the case.

DISPOSITION

The orders are affirmed.

CALLAHAN, J.

We concur:

DAVIS, Acting P.J.

RAYE, J.